

No. 91-7604

MAY 15 PAGE 34

IN THE  
SUPREME COURT OF THE UNITED STATES  
OCTOBER TERM, 1991

JEFFERY ANTOINE,

Petitioner,

v.

BYERS & ANDERSON, INC. AND SHANNA  
RUGGENBERG,

Respondents.

PETITIONER'S REPLY TO RESPONDENTS'  
OPPOSITION TO PETITION FOR WRIT OF  
CERTIORARI

M. Margaret McKeown  
(Counsel of Record)  
Jeffrey M. Thomas  
PERKINS COIE  
1201 Third Avenue  
40th Floor  
Seattle, WA 98101-3099  
(206) 583-8888  
Attorneys for Petitioner  
Jeffery Antoine

10 P

**CONTENTS**

I. INTRODUCTION ..... 1

II. ARGUMENT ..... 1

    A. THE COURT SHOULD GRANT THE  
        PETITION FOR CERTIORARI TO  
        RESOLVE THE SPLIT IN AUTHORITY  
        AMONG THE CIRCUITS ..... 1

    B. THE COURT SHOULD GRANT  
        CERTIORARI TO ACHIEVE NATIONAL  
        UNIFORMITY ON THIS IMPORTANT  
        QUESTION OF FEDERAL LAW ..... 2

    C. RESPONDENTS' OBJECTIONS ARE  
        MERITLESS AND DO NOT BEAR ON  
        THE ISSUES THAT WOULD PROPERLY  
        BE BEFORE THE COURT IF  
        CERTIORARI IS GRANTED ..... 3

III. CONCLUSION ..... 5

**I. INTRODUCTION**

Jeffery Antoine has filed a Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit. Petitioner Antoine requests the Court to review a decision of the Ninth Circuit that granted absolute immunity to a court reporter, despite her violation of court orders and statutory duties. There is a conflict of authority regarding this issue among the federal circuits regarding this important question of federal law. The majority of circuits considering the issue hold that court reporters have qualified, rather than absolute immunity. Respondents oppose Mr. Antoine's petition, without addressing the conflict among circuits. Petitioner Jeffery Antoine requests that the Court grant his petition.

**II. ARGUMENT**

**A. THE COURT SHOULD GRANT THE PETITION FOR CERTIORARI TO RESOLVE THE SPLIT IN AUTHORITY AMONG THE CIRCUITS**

The federal circuits are split on whether court reporters have qualified, rather than absolute immunity. Compare Green v. Maraio, 722 F.2d 1013 (2d Cir. 1983); McLallen v. Henderson, 492 F.2d 1298 (8th Cir. 1974); Slavin v. Curry, 574 F.2d 1256 (5th Cir. 1978); McCray v. Maryland,

456 F.2d 1 (4th Cir. 1972) with Antoine v. Byers & Anderson, 950 F.2d 1471 (9th Cir. 1991); Scruggs v. Moellering, 870 F.2d 376 (7th Cir.), cert. denied, 493 U.S. 956 (1989). Granting this petition for certiorari gives the Court an opportunity to address this important question and resolve the split among circuits.

**B. THE COURT SHOULD GRANT CERTIORARI TO ACHIEVE NATIONAL UNIFORMITY ON THIS IMPORTANT QUESTION OF FEDERAL LAW**

Whether court reporters have qualified, rather than absolute immunity presents an important question of federal law. National uniformity is desirable. Court reporters are federal officials, whose civil liability for misconduct ought to be the same in Seattle as it is in New York. Similarly, litigants who are harmed by a court reporter's misconduct should have the same opportunity for redress, regardless of judicial circuit.

Respondents attempt to construct a parade of horrors if court reporters are not accorded absolute immunity. They cite the threat of vexatious litigation and disruption of the judicial process. This argument erroneously suggests an "all or nothing" approach to immunity--either absolute immunity bars all suits

or the floodgates of litigation will opened. To the contrary, the denial of absolute immunity does not necessarily preclude the availability of qualified immunity for those court reporters who act within their duties. Further, those circuits who have operated for years without absolute immunity have not been brought to a halt by unwarranted litigation. The Court should review this important public policy question.

**C. RESPONDENTS' OBJECTIONS ARE MERITLESS AND DO NOT BEAR ON THE ISSUES THAT WOULD PROPERLY BE BEFORE THE COURT IF CERTIORARI IS GRANTED**

In opposition, Respondents raise several objections to statements in the petition for certiorari. These objections are erroneous or irrelevant.<sup>1</sup> Petitioner's statements of fact are

---

<sup>1</sup>Respondents object to characterizing the court reporter's conduct as grossly negligent. The court reporter's culpability, however, would not be before the Court if certiorari is granted. The question presented involves the propriety of absolute immunity.

Respondents next object to the statement that the court reporter violated numerous court orders. The lower courts noted the violation of multiple court orders. Petition, App. A, 2a, 4a; App. B, 5a.

Respondents' third objection is erroneous. They object to Petitioner's assertion that Ruggenberg's behavior resulted in a four-year delay in Mr. Antoine's appeal of his criminal conviction. This is the precise characterization of the court of appeals. Petition, App. A, 7a.

Respondents' fourth objection, as to whether Byers & Anderson contracted with the district court, is both

taken from the opinions below. The procedural posture in this case is a summary judgment motion brought by Respondents. Issues of fact and related inferences properly were resolved in favor of Petitioner. Petitioner asks the Court to review an important question of federal law, not to make fact findings. The Court may accept for purposes of review the lower courts' statements of fact.

Respondents also attempt to distinguish between the threshold requirements of executive and judicial immunity. The Court has never articulated such a distinction, nor do the cases support one. In any event, this is an argument on

---

erroneous and irrelevant. The court of appeals stated that "Byers & Anderson . . . contracted with the United States District Court . . . ." Petition, App. A, 2a. Whether a contract existed is also irrelevant to the issue of absolute immunity.

Respondents next object to Petitioner's statements that Ruggenberg failed to meet court deadlines, request an extension, or communicate with counsel. Again, this reflects the language of the court of appeals. Petition, App. A, 2a.

Finally, Respondents attempt to obscure the court of appeals' failure to grant Mr. Antoine's request for acquittal in the appeal of his criminal conviction. In his criminal appeal, the court directed a remand to determine whether Ruggenberg's misconduct violated Mr. Antoine's due process rights, but refused to order an acquittal if such a violation were found. Petition, App. D, 19a. This holding was based on the availability of alternative remedies, which the court cited as including a civil claim. Id.

the merits which is irrelevant to the decision to grant certiorari.

### III. CONCLUSION

There is an unmistakable conflict among the circuits regarding an important question of federal law--whether court reporters should be absolutely shielded from liability, despite their wrongful conduct in violation of express court orders. The issue involves an important question of federal law and national uniformity is desirable. The Court should grant the petition for a writ of certiorari to the United States Court of Appeals for the Ninth Circuit.

Respectfully submitted,

M. Margaret McKeown by JMT  
M. Margaret McKeown  
(Counsel of Record)  
Jeffrey M. Thomas  
PERKINS COIE  
1201 Third Avenue  
40th Floor  
Seattle, WA 98101-3099  
(206) 583-8888  
Attorneys for Petitioner  
Jeffery Antoine

May 7, 1992



No. 91-7604

IN THE  
SUPREME COURT OF THE UNITED STATES  
OCTOBER TERM, 1991

JEFFERY ANTOINE,

Petitioner,

v.

BYERS & ANDERSON, INC. AND SHANNA RUGGENBERG,

Respondents.

AFFIDAVIT OF SERVICE

M. Margaret McKeown  
(Counsel of Record)  
Jeffrey M. Thomas  
PERKINS COIE  
1201 Third Avenue  
40th Floor  
Seattle, WA 98101-3099  
(206) 583-8888  
Attorneys for Petitioner  
Jeffery Antoine

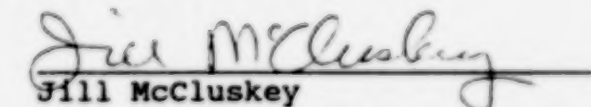
STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF KING )

The undersigned, being first duly sworn, on  
oath deposes and says:

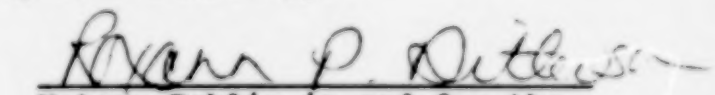
That on this day I deposited in the U.S.  
mail, first class postage prepaid, true and  
correct copies of Petitioner's Reply to  
Respondents' Opposition to Petition for Writ of  
Certiorari to the following:

William P. Fite  
Betts, Patterson & Mines  
800 Financial Center  
1215 Fourth Avenue  
Seattle, WA 98161  
(206) 292-9988  
Attorneys for Respondent Shanna  
Ruggenberg

Tyna Lee Ek  
Merrick, Hofstedt & Lindsey  
710 Ninth Avenue  
Seattle, WA 98104  
(206) 682-0610  
Attorneys for Respondent Byers &  
Anderson, Inc.

  
Jill McCluskey

SUBSCRIBED AND SWORN to before me this 7<sup>th</sup>  
day of May, 1992, by Jill McCluskey.

  
Notary Public in and for the  
State of Washington  
Residing at Seattle  
My appointment expires 7/7/93

# PERKINS COIE

A LAW PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

1201 THIRD AVENUE, 40TH FLOOR • SEATTLE, WASHINGTON 98101-3099 • (206) 583-8888

May 7, 1992

VIA OVERNIGHT DELIVERY

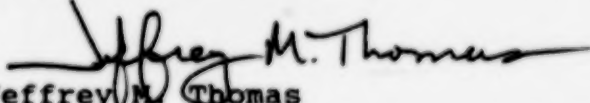
Clerk of the Court  
United States Supreme Court  
Supreme Court Building  
One First Street, N.E.  
Washington, D.C. 20543

**Re: Jeffery Antoine v. Byers & Anderson, Inc. and  
Shanna Ruggenberg  
Cause No. 91-7604**

Dear Sir or Madam:

We are enclosing an original and one copy of Petitioner Jeffery Antoine's Reply to Respondents' Opposition to Petition for Writ of Certiorari, and Certificate of Service, for filing with the United States Supreme Court. Please conform the set of copies and return them to this office in the enclosed self-addressed, stamped envelope.

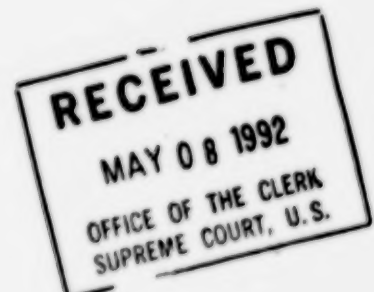
Very truly yours,

  
Jeffrey M. Thomas

JMT:clr

Enclosures

cc: Tyna Lee Ek (with enclosures)  
William P. Fite (with enclosures)



[09901-6610/SL921280.104]

TELEX 32-0319 PERKINS SEA • FACSIMILE (206) 583-8500

ANCHORAGE • BELLEVUE • LOS ANGELES • PORTLAND • SPOKANE • WASHINGTON, D.C.